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8	BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS			
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10	STATE OF CALIFORNIA			
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12	In the Matter of the Accusation Against: Case No. 2011- 8			
13	LYDIA CAMACHO DUGAN 10341 N. Portal Avenue			
14	Cupertino, CA 95014 Registered Nurse License No. 405040 ACCUSATION			
15	Respondent.			
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17	<u>PARTIES</u>			
18.	1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her			
19	official capacity as the Interim Executive Officer of the Board of Registered Nursing, Departmen			
20	of Consumer Affairs.			
21	2. On or about August 31, 1986, the Board of Registered Nursing issued Registered			
22	Nurse License Number 405040 to Lydia Camacho Dugan ("Respondent"). The Registered Nurs			
23	License was in full force and effect at all times relevant to the charges brought herein and will			
24	expire on May 31, 2012, unless renewed.			
25	<u>JURISDICTION</u>			
26	3. This Accusation is brought before the Board of Registered Nursing ("Board"),			
27	Department of Consumer Affairs, under the authority of the following laws. All section			
28	references are to the Business and Professions Code unless otherwise indicated.			

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

RELEVANT STATUTES AND REGULATIONS

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- "(a) Unprofessional conduct, which includes, but is not limited to, the following:
- "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.
- "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

7. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with

Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

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"(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."

8. California Code of Regulations, title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life."

9. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

10. Code section 4060 states, in pertinent part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052...

11. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . ."

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COST RECOVERY

12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED MEDICATIONS AT ISSUE

- 13. "Sublimaze" is the brand name for Fentanyl, an opioid analgesic. It is a Schedule II controlled substance pursuant to Health and Safety Code section 11055 (c)(8) and a dangerous drug under Code section 4022.
- 14. "Versed" is the brand name for the generic drug Midazolam. It is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d)(21) and is a dangerous drug under Code section 4022. It is used for pre-operative sedation/amnesia or for induction of general anesthesia.

STATEMENT OF RELEVANT FACTS

- 15. Respondent was hired as a registered nurse at Kaiser Santa Clara from 1986 until July 2006. During the relevant dates at issue, Respondent was assigned to Kaiser's Outpatient Procedure Center ("Kaiser-OPPC"), whose patients were undergoing colonoscopy or endoscopy procedures.
- 16. Respondent completed Kaiser's orientation and training for nurses working at Kaiser-OPPC, which included protocols for withdrawing and returning controlled substances to the Pyxis¹ for patient procedures.
- 17. Respondent admitted that she had withdrawn medications from the Pyxis under one patient's name, but would then administer these withdrawn medications to a different patient.
- 18. Kaiser's protocols required that nurses return unused controlled substances to the Pyxis under the name of the patient for whom the medication had been originally withdrawn.

¹ The Pyxis is an automated medication dispensing station. Each nurse is given her own identification number and is required to remove medications contained in the Pyxis under a specific patient's name and medical record number. Any wasted and/or returned medications are also to be documented in the Pyxis.

A drug audit at Kaiser-OPPC in 2006, revealed that Respondent had withdrawn 17 vials of controlled substances that she reported as being "wasted" versus returned to the Pyxis.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence/Incompetence - Unintelligible Medication Entries)

19. Respondent is subject to disciplinary action under Code section 2761(a) in that while on duty as a registered nurse at Kaiser-OPPC, she made false, grossly incorrect, inconsistent, and/or or unintelligible entries in hospital and patient records pertaining to controlled substances, in violation of Code section 2762(e) as follows:

Patient 1:

a. On May 4, 2006, Respondent withdrew two vials of Fentanyl (2ml/100mcg) for Patient 1. In the Pyxis, Respondent noted returning one vial of Fentanyl, wasting 50 mcg of Fentanyl and administering 50 mcg of Fentanyl to Patient 1. However, on the Procedural Sedation Record, Respondent noted that she had administered 75 mcg of Fentanyl to Patient 1., a 25 mcg discrepancy with what she noted in Pyxis.

Patient 2:

b. On May 19, 2006, Respondent removed two vials of Fentanyl (2ml/100mcg) and three vials of Versed under Patient 2's name. Patient 2 was admitted to Kaiser's Outpatient Retinal Surgery Center, not Kaiser-OPPC. Respondent failed to document the wasting and/or account for the removal of the Fentanyl and Versed for any patient who had been admitted to Kaiser-OPCC on May 19, 2006.

Patient 3:

c. On May 19, 2006, Respondent recorded on the Procedural Sedation Record that she administered the following medications to Patient 3: (1) 100 mcg of Fentanyl; (2) Versed (2 mg); and (3) Benadryl. There were no corresponding entries in Pyxis indicating that Respondent had withdrawn these medications for Patient 3.

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SECOND CAUSE FOR DISCIPLINE

(Gross Negligence/Incompetence – Withdraw/Administration of Medication Without Physician Order)

20. Respondent is subject to disciplinary action under Code section 2761(a) in that while on duty as a registered nurse at Kaiser, she withdrew controlled substances under the name of a patient for whom she had no physician's order in violation of Code section 2762(a) as follows:

Patient 2:

a. On May 19, 2006, Respondent removed two vials of Fentanyl (2ml/100mcg) and three vials of Versed under Patient 2's name. Patient 2 was admitted to Kaiser's Outpatient Retinal Surgery Center, not Kaiser-OPPC. Respondent failed to document the waste and/or account for the removal of the Fentanyl and Versed for any patient who had been admitted to Kaiser-OPCC on May 19, 2006.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Incompetence)

21. Respondent is subject to disciplinary action under Code section 2761(a) in that she committed unprofessional conduct and was incompetent while on duty as she failed to comply with Kaiser-OPPC's policy and procedures in regards to the withdrawal/administration and/or return of controlled substances to the Pyxis as set forth above in paragraphs 15 through 20.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 1. Revoking or suspending Registered Nurse License Number 405040, issued to Lydia Camacho Dugan.
- 2. Ordering Lydia Camacho Dugan to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3.

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1	3. Taking such other and further action as deemed necessary and proper.		
2	DATED:	7/,110	Louise R. Beeiley
3	DAILD		LOUISE R. BAILEY, M.ED., RN Interim Executive Officer
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